

The bill (S. 3328), as amended, was ordered to be engrossed for a third reading, read the third time and passed, as follows:

S. 3328

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. ONE-YEAR EXTENSION OF OTHER TRANSACTION AUTHORITY.**

Section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391(a)) is amended—

(1) in subsection (a)—

(A) by striking “Until September 30, 2008, the Secretary may carry out a pilot program” and inserting “If the Secretary issues policy guidance by September 30, 2008, detailing the appropriate use of other transaction authority and provides mandatory other transaction training to each employee who has the authority to handle procurements under other transaction authority, the Secretary may, before September 30, 2009, carry out a program”; and

(B) in paragraph (1), by striking “subsection (b)” and inserting “subsection (b)(1)”;—

(2) in subsection (b)—

(A) by striking “(b) REPORT.—Not later than 2 years” and inserting “(b) REPORTS.—“(1) IN GENERAL.—Not later than 2 years”;—

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and realigning such subparagraphs, as so redesignated, so as to be indented 4 ems from the left margin; and

(C) by adding at the end the following new paragraph:

“(2) ANNUAL REPORT ON EXERCISE OF OTHER TRANSACTION AUTHORITY.—

“(A) IN GENERAL.—The Secretary shall submit to the Committee on Homeland Security and Governmental Affairs and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Homeland Security of the House of Representatives an annual report on the exercise of other transaction authority under subsection (a).

“(B) CONTENT.—The report required under subparagraph (A) shall include the following:

“(i) The technology areas in which research projects were conducted under other transactions.

“(ii) The extent of the cost-sharing among Federal and non-Federal sources.

“(iii) The extent to which use of the other transactions—

“(I) has contributed to a broadening of the technology and industrial base available for meeting the needs of the Department of Homeland Security; and

“(II) has fostered within the technology and industrial base new relationships and practices that support the national security of the United States.

“(iv) The total amount of payments, if any, that were received by the Federal Government during the fiscal year covered by the report.

“(v) The rationale for using other transaction authority, including why grants or Federal Acquisition Regulation-based contracts were not used, the extent of competition, and the amount expended for each such project.”.

**FEDERAL PROTECTIVE SERVICE GUARD CONTRACTING REFORM ACT OF 2007**

Mr. MENENDEZ. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 953, H.R. 3068.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3068) to prohibit the award of contracts to provide guard services under the contract security guard program of the Federal Protective Service to a business concern that is owned, controlled, or operated by an individual who has been convicted of a felony.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Homeland Security and Governmental Affairs with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

H.R. 3068

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Federal Protective Service Guard Contracting Reform Act of 2008”.

**SEC. 2. FEDERAL PROTECTIVE SERVICE CONTRACTS.**

(a) PROHIBITION ON AWARD OF CONTRACTS TO ANY BUSINESS CONCERN OWNED, CONTROLLED, OR OPERATED BY AN INDIVIDUAL CONVICTED OF A FELONY.—

(1) IN GENERAL.—The Secretary of Homeland Security, acting through the Assistant Secretary of U.S. Immigration and Customs Enforcement—

(A) shall promulgate regulations establishing guidelines for the prohibition of contract awards for the provision of guard services under the contract security guard program of the Federal Protective Service to any business concern that is owned, controlled, or operated by an individual who has been convicted of a felony; and

(B) may consider permanent or interim prohibitions when promulgating the regulations.

(2) CONTENTS.—The regulations under this subsection shall—

(A) identify which serious felonies may prohibit a contractor from being awarded a contract;

(B) require contractors to provide information regarding any relevant felony convictions when submitting bids or proposals; and

(C) provide guidelines for the contracting officer to assess present responsibility, mitigating factors, and the risk associated with the previous conviction, and allow the contracting officer to award a contract under certain circumstances.

(b) REGULATIONS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall issue regulations to carry out this section.

**SEC. 3. REPORT ON GOVERNMENT-WIDE APPLICABILITY.**

Not later than 18 months after the date of enactment of the Act, the Administrator for Federal Procurement Policy shall submit a report on establishing similar guidelines government-wide to the Committee on Homeland Security and Governmental Affairs and the Committee on Oversight and Government Reform of the House of Representatives.

Mr. MENENDEZ. I ask unanimous consent that the committee-reported substitute be agreed to; the bill, as amended, be read a third time and passed; the motions to reconsider be laid upon the table, with no intervening action or debate; and that any statements related thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 3068), as amended, was read the third time and passed.

**INDIAN ARTS AND CRAFTS AMENDMENTS ACT OF 2007**

Mr. MENENDEZ. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 961, S. 1255.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1255) to protect Indian arts and crafts through the improvement of applicable criminal proceedings, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Indian Affairs with amendments, as follows:

[The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.]

S. 1255

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Indian Arts and Crafts Amendments Act of 2007[7] 8”.

**SEC. 2. INDIAN ARTS AND CRAFTS.**

(a) CRIMINAL PROCEEDINGS; CIVIL ACTIONS; MISREPRESENTATIONS.—Section 5 of the Act entitled “An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes” (25 U.S.C. 305d) is amended to read as follows:

**“SEC. 5. CRIMINAL PROCEEDINGS; CIVIL ACTIONS.**

“(a) DEFINITION OF FEDERAL LAW ENFORCEMENT OFFICER.—In this section, the term ‘Federal law enforcement officer’ includes a Federal law enforcement officer (as defined in section 115(c) of title 18, United States Code).

“(b) CONDUCT OF INVESTIGATIONS.—Any Federal law enforcement officer may conduct an investigation relating to a violation of this Act that occurs on land under the jurisdiction of the Federal Government.]

“(b) AUTHORITY TO CONDUCT INVESTIGATIONS.—Any Federal law enforcement officer shall have the authority to conduct an investigation relating to an alleged violation of this Act occurring within the jurisdiction of the United States.

“(c) CRIMINAL PROCEEDINGS.—

“(1) INVESTIGATION.—

“(A) IN GENERAL.—The Board may refer an alleged violation of section 1159 of title 18, United States Code, to any Federal law enforcement officer for appropriate investigation.

“(B) REFERRAL NOT REQUIRED.—A Federal law enforcement officer may investigate an alleged violation of section 1159 of that title regardless of whether the Federal law enforcement officer receives a referral under subparagraph (A).

“(2) FINDINGS.—The findings of an investigation of an alleged violation of section 1159 of title 18, United States Code, by any Federal department or agency under paragraph (1)(A) shall be submitted, as appropriate, to—[mitted to—

“(A) the Attorney General; or]

“(A) a Federal or State prosecuting authority; or

“(B) the Board.

“(3) RECOMMENDATIONS.—On receiving the findings of an investigation under paragraph (2), the Board may—

“(A) recommend to the Attorney General that criminal proceedings be initiated under section 1159 of title 18, United States Code; and

“(B) provide such support to the Attorney General relating to the criminal proceedings as the Attorney General determines to be appropriate.

“(d) CIVIL ACTIONS.—In lieu of, or in addition to, any criminal proceeding under subsection (c), the Board may recommend that the Attorney General initiate a civil action under section 6.”

(b) CAUSE OF ACTION FOR MISREPRESENTATION.—Section 6 of the Act entitled “An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes” (25 U.S.C. 305e) is amended—

(1) by striking subsection (d);

(2) by redesignating subsections (a) through (c) as subsections (b) through (d), respectively;

(3) by inserting before subsection (b) (as redesignated by paragraph (2)) the following:

“(a) DEFINITIONS.—In this section:

“(1) INDIAN.—The term ‘Indian’ means an individual that—

“(A) is a member of an Indian tribe; or

“(B) is certified as an Indian artisan by an Indian tribe.

“(2) INDIAN PRODUCT.—The term ‘Indian product’ has the meaning given the term in any regulation promulgated by the Secretary.

“(3) INDIAN TRIBE.—

“(A) IN GENERAL.—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

“(B) INCLUSION.—The term ‘Indian tribe’ includes, for purposes of this section only, an Indian group that has been formally recognized as an Indian tribe by—

“(i) a State legislature;

“(ii) a State commission; or

“(iii) another similar organization vested with State legislative tribal recognition authority.

“(4) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.”

(4) in subsection (b) (as redesignated by paragraph (2)), by striking “subsection (c)” and inserting “subsection (d)”;

(5) in subsection (c) (as redesignated by paragraph (2))—

(A) by striking “subsection (a)” and inserting “subsection (b)”;

(B) by striking “suit” and inserting “the civil action”;

(6) by striking subsection (d) (as redesignated by paragraph (2)) and inserting the following:

“(d) PERSONS THAT MAY INITIATE CIVIL ACTIONS.—

“(1) IN GENERAL.—A civil action under subsection (b) may be initiated by—

“(A) the Attorney General, at the request of the Secretary acting on behalf of—

“(i) an Indian tribe;

“(ii) an Indian; or

“(iii) an Indian arts and crafts organization;

“(B) an Indian tribe, acting on behalf of—

“(i) the Indian tribe;

“(ii) a member of that Indian tribe; or

“(iii) an Indian arts and crafts organization;

“(C) an Indian; or

“(D) an Indian arts and crafts organization.

“(2) DISPOSITION OF AMOUNTS RECOVERED.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), an amount recovered in a civil action under this section shall be paid to the Indian tribe, the Indian, or the Indian arts and crafts organization on the behalf of which the civil action was initiated.

“(B) EXCEPTIONS.—

“(i) ATTORNEY GENERAL.—In the case of a civil action initiated under paragraph (1)(A), the Attorney General may deduct from the amount—

“(I) the amount of the cost of the civil action and reasonable attorney’s fees awarded under subsection (c), to be deposited in the Treasury and credited to appropriations available to the Attorney General on the date on which the amount is recovered; and

“(II) the amount of the costs of investigation awarded under subsection (c), to reimburse the Board for the activities of the Board relating to the civil action.

“(ii) INDIAN TRIBE.—In the case of a civil action initiated under paragraph (1)(B), the Indian tribe may deduct from the amount—

“(I) the amount of the cost of the civil action; and

“(II) reasonable attorney’s fees.”; and

(7) in subsection (e), by striking “(e) In the event that” and inserting the following:

“(e) SAVINGS PROVISION.—If”.

### SEC. 3. MISREPRESENTATION OF INDIAN PRODUCED GOODS AND PRODUCTS.

Section 1159 of title 18, United States Code, is amended—

(1) by striking subsection (b) and inserting the following:

“(b) PENALTY.—Any person that knowingly violates subsection (a) shall—

“(1) in the case of a first violation by that person—

“(A) if the applicable goods are offered or displayed for sale at a total price of \$1,000 or more, or if the applicable goods are sold for a total price of \$1,000 or more—

“(i) in the case of an individual, be fined not more than \$250,000, imprisoned for not more than 5 years, or both; and

“(ii) in the case of a person other than an individual, be fined not more than \$1,000,000; and

“(B) if the applicable goods are offered or displayed for sale at a total price of less than \$1,000, or if the applicable goods are sold for a total price of less than \$1,000—

“(i) in the case of an individual, be fined not more than \$25,000, imprisoned for not more than 1 year, or both; and

“(ii) in the case of a person other than an individual, be fined not more than \$100,000; and

“(2) in the case of a subsequent violation by that person, regardless of the amount for which any good is offered or displayed for sale or sold—

“(A) in the case of an individual, be fined under this title, imprisoned for not more than 15 years, or both; and

“(B) in the case of a person other than an individual, be fined not more than \$5,000,000.”; and

(2) in subsection (c), by striking paragraph (3) and inserting the following:

“(3) the term ‘Indian tribe’—

“(A) has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b); and

“(B) includes, for purposes of this section only, an Indian group that has been formally recognized as an Indian tribe by—

“(i) a State legislature;

“(ii) a State commission; or

“(iii) another similar organization vested with State legislative tribal recognition authority; and”.

Mr. MENENDEZ. I ask unanimous consent that the committee-reported

amendments be agreed to; the bill, as amended, be read a third time and passed; the motion to reconsider be laid upon the table; and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were agreed to.

The bill (S. 1255), as amended, was ordered to be engrossed for a third reading, was read the third time and passed, as follows:

S. 1255

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Indian Arts and Crafts Amendments Act of 2008”.

### SEC. 2. INDIAN ARTS AND CRAFTS.

(a) CRIMINAL PROCEEDINGS; CIVIL ACTIONS; MISREPRESENTATIONS.—Section 5 of the Act entitled “An Act to promote the development of Indian arts and crafts and to create a board to assist therein, and for other purposes” (25 U.S.C. 305d) is amended to read as follows:

#### “SEC. 5. CRIMINAL PROCEEDINGS; CIVIL ACTIONS.

“(a) DEFINITION OF FEDERAL LAW ENFORCEMENT OFFICER.—In this section, the term ‘Federal law enforcement officer’ includes a Federal law enforcement officer (as defined in section 115(c) of title 18, United States Code).

“(b) AUTHORITY TO CONDUCT INVESTIGATIONS.—Any Federal law enforcement officer shall have the authority to conduct an investigation relating to an alleged violation of this Act occurring within the jurisdiction of the United States.

“(c) CRIMINAL PROCEEDINGS.—

“(1) INVESTIGATION.—

“(A) IN GENERAL.—The Board may refer an alleged violation of section 1159 of title 18, United States Code, to any Federal law enforcement officer for appropriate investigation.

“(B) REFERRAL NOT REQUIRED.—A Federal law enforcement officer may investigate an alleged violation of section 1159 of that title regardless of whether the Federal law enforcement officer receives a referral under subparagraph (A).

“(2) FINDINGS.—The findings of an investigation of an alleged violation of section 1159 of title 18, United States Code, by any Federal department or agency under paragraph (1)(A) shall be submitted, as appropriate, to—

“(A) a Federal or State prosecuting authority; or

“(B) the Board.

“(3) RECOMMENDATIONS.—On receiving the findings of an investigation under paragraph (2), the Board may—

“(A) recommend to the Attorney General that criminal proceedings be initiated under section 1159 of title 18, United States Code; and

“(B) provide such support to the Attorney General relating to the criminal proceedings as the Attorney General determines to be appropriate.

“(d) CIVIL ACTIONS.—In lieu of, or in addition to, any criminal proceeding under subsection (c), the Board may recommend that the Attorney General initiate a civil action under section 6.”

(b) CAUSE OF ACTION FOR MISREPRESENTATION.—Section 6 of the Act entitled “An Act to promote the development of Indian arts and crafts and to create a board to assist

therein, and for other purposes" (25 U.S.C. 305e) is amended—

(1) by striking subsection (d);

(2) by redesignating subsections (a) through (c) as subsections (b) through (d), respectively;

(3) by inserting before subsection (b) (as redesignated by paragraph (2)) the following:

“(a) DEFINITIONS.—In this section:

“(1) INDIAN.—The term ‘Indian’ means an individual that—

“(A) is a member of an Indian tribe; or

“(B) is certified as an Indian artisan by an Indian tribe.

“(2) INDIAN PRODUCT.—The term ‘Indian product’ has the meaning given the term in any regulation promulgated by the Secretary.

“(3) INDIAN TRIBE.—

“(A) IN GENERAL.—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

“(B) INCLUSION.—The term ‘Indian tribe’ includes, for purposes of this section only, an Indian group that has been formally recognized as an Indian tribe by—

“(i) a State legislature;

“(ii) a State commission; or

“(iii) another similar organization vested with State legislative tribal recognition authority.

“(4) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.”;

(4) in subsection (b) (as redesignated by paragraph (2)), by striking “subsection (c)” and inserting “subsection (d)”;

(5) in subsection (c) (as redesignated by paragraph (2))—

(A) by striking “subsection (a)” and inserting “subsection (b)”;

(B) by striking “suit” and inserting “the civil action”;

(6) by striking subsection (d) (as redesignated by paragraph (2)) and inserting the following:

“(d) PERSONS THAT MAY INITIATE CIVIL ACTIONS.—

“(1) IN GENERAL.—A civil action under subsection (b) may be initiated by—

“(A) the Attorney General, at the request of the Secretary acting on behalf of—

“(i) an Indian tribe;

“(ii) an Indian; or

“(iii) an Indian arts and crafts organization;

“(B) an Indian tribe, acting on behalf of—

“(i) the Indian tribe;

“(ii) a member of that Indian tribe; or

“(iii) an Indian arts and crafts organization;

“(C) an Indian; or

“(D) an Indian arts and crafts organization.

“(2) DISPOSITION OF AMOUNTS RECOVERED.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), an amount recovered in a civil action under this section shall be paid to the Indian tribe, the Indian, or the Indian arts and crafts organization on the behalf of which the civil action was initiated.

“(B) EXCEPTIONS.—

“(i) ATTORNEY GENERAL.—In the case of a civil action initiated under paragraph (1)(A), the Attorney General may deduct from the amount—

“(I) the amount of the cost of the civil action and reasonable attorney’s fees awarded under subsection (c), to be deposited in the Treasury and credited to appropriations available to the Attorney General on the date on which the amount is recovered; and

“(II) the amount of the costs of investigation awarded under subsection (c), to reimburse the Board for the activities of the Board relating to the civil action.

“(ii) INDIAN TRIBE.—In the case of a civil action initiated under paragraph (1)(B), the Indian tribe may deduct from the amount—

“(I) the amount of the cost of the civil action; and

“(II) reasonable attorney’s fees.”; and

(7) in subsection (e), by striking “(e) In the event that” and inserting the following:

“(e) SAVINGS PROVISION.—If”.

### SEC. 3. MISREPRESENTATION OF INDIAN PRODUCED GOODS AND PRODUCTS.

Section 1159 of title 18, United States Code, is amended—

(1) by striking subsection (b) and inserting the following:

“(b) PENALTY.—Any person that knowingly violates subsection (a) shall—

“(1) in the case of a first violation by that person—

“(A) if the applicable goods are offered or displayed for sale at a total price of \$1,000 or more, or if the applicable goods are sold for a total price of \$1,000 or more—

“(i) in the case of an individual, be fined not more than \$250,000, imprisoned for not more than 5 years, or both; and

“(ii) in the case of a person other than an individual, be fined not more than \$1,000,000; and

“(B) if the applicable goods are offered or displayed for sale at a total price of less than \$1,000, or if the applicable goods are sold for a total price of less than \$1,000—

“(i) in the case of an individual, be fined not more than \$25,000, imprisoned for not more than 1 year, or both; and

“(ii) in the case of a person other than an individual, be fined not more than \$100,000; and

“(2) in the case of a subsequent violation by that person, regardless of the amount for which any good is offered or displayed for sale or sold—

“(A) in the case of an individual, be fined under this title, imprisoned for not more than 15 years, or both; and

“(B) in the case of a person other than an individual, be fined not more than \$5,000,000.”; and

(2) in subsection (c), by striking paragraph (3) and inserting the following:

“(3) the term ‘Indian tribe’—

“(A) has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b); and

“(B) includes, for purposes of this section only, an Indian group that has been formally recognized as an Indian tribe by—

“(i) a State legislature;

“(ii) a State commission; or

“(iii) another similar organization vested with State legislative tribal recognition authority; and”.

### FEDERAL AVIATION ADMINISTRATION EXTENSION ACT OF 2008, PART II

Mr. MENENDEZ. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6984, which was received from the House.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 6984) to amend title 49, United States Code, to extend authorizations for the airport improvement program, to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. KERRY. Mr. President, I want to say a few words about the FAA’s Disadvantaged Business Enterprise, DBE, Program and the Airport Concessions Disadvantaged Business Enterprise, ACDBE, Program. As we are all aware, case law over the past decade has made clear that Federal race-conscious programs are subject to strict constitutional scrutiny to ensure that programs serve a compelling governmental interest and are narrowly tailored to address that interest. Gender-conscious programs must meet heightened scrutiny to ensure that there is an exceedingly persuasive justification for the program. Still, under any reading of constitutional law, race- and gender-conscious programs are clearly permitted to remedy current discrimination and the present-day effects of past discrimination where there is a strong basis in evidence that such discrimination exists. As the Commerce Committee is aware, discrimination in business practices continues to be a serious problem. There are countless disparity studies and examinations of this topic and for that reason we have made only minor changes to the DBE and ACDBE program over time. Taken as a whole, the quantitative and qualitative evidence clearly suggests that discrimination remains a serious problem in our Nation.

I serve both as a member of the Commerce Committee and as chairman of the Senate Small Business Committee. In these roles, I have the opportunity to review enormous amounts of information about discrimination against women and minority entrepreneurs throughout our economy and across our Nation. While we have made very real progress over the time that I have been in the Senate, there is no doubt that a lot of work remains to be done. Programs such as the DBE and ACDBE programs are making an important difference by offering real opportunities to companies that otherwise might not ever get a chance to compete. These programs are critically important in airport-related industries as well as in other areas of Federal contracting.

The statistics are telling. On May 22, 2007, I held a hearing in the Small Business Committee addressing the effectiveness of SBA’s programs for minority businesses. One economist who testified, Dr. Jon Wainwright, presented a number of troubling statistics to the committee. For instance, he explained that according to the most recent economic census data available, while African Americans constitute 12.7 percent of the population, they own only 5.3 percent of businesses and those businesses account for only 1 percent of business sales and receipts. Latinos are 13.4 percent of the population, but only 7 percent of businesses and 2.5 percent of business sales and receipts. Dr. Wainwright also noted that Asian and Pacific Islanders own 5 percent of businesses but earned only 3.8 percent of business sales and receipts and Native Americans constituted .9 percent of the